



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: Stott et al.

Application Serial No.: 10/663,225

Filing Date: September 16, 2003

Title: User Interface for Automated Diagnostic Hearing Test

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

**FILING OF STATEMENT UNDER 37 C.F.R. § 3.73(b),  
BY ASSIGNEE OF OMITTED INVENTOR,  
TO ESTABLISH RIGHT OF PARTIAL ASSIGNEE TO TAKE ACTION**

AND

**SUBMISSION OF INFORMATION DISCLOSURE STATEMENT**

BioCell, L.P. ("BioCell") files the attached Statement Under 37 C.F.R. § 3.73(b) to establish its right to take action as an Assignee of an undivided partial interest in this Application. BioCell is the assignee of an omitted inventor, Mr. Gary Dodd. Mr. Dodd asserts that he is a co-inventor of the subject matter of this Application. The inventorship and ownership of this Application are disputed issues in a currently pending federal court litigation action between BioCell and the named inventors' assignee, Tympany, Inc. Because ownership of this Application is contested, BioCell understands

*Submission improper*

- 1) Not a prior art submission (patents and printed publications - 37 CFR 1.99(a))
- 2) Not identified as a 37 CFR 1.99 Submission - MPEP 1134.01(II)
- 3) Not timely filed under 37 CFR 1.99(e)

*4) Includes extraneous information 37 CFR 1.99(d)**5) No evidence of service on applicant 37 CFR 1.99(c)**pm 5.26.05***CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.10**

I hereby certify that on the date shown below, the following documents are being delivered by the Express Mail Post Office to Addressee service of the United States Postal Service, Express Mail mailing label number EL 812640201 US, addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450:

1. Filing of Statement Under 37 C.F.R. § 3.73(b), by Assignee of Omitted Inventor, to Establish Right of Partial Assignee to Take Action - and - Submission of Information Disclosure Statement;
2. Statement Under 37 C.F.R. § 3.73(b);
3. Information Disclosure Statement (including Cited Papers and \$180.00 fee pursuant to Rule 1.17(p) for submission of an Information Disclosure Statement Under Rule 1.97(c)(2); and
4. Return postcard.

December 29, 2004

Date

*CJR*

Charles J. Rogers

01/03/2005 GWDOF1 00000012 10663225

01 FC:1806

180.00 OP

*The papers have been "expunged" by being closed and made unavailable to the public pm 5.26.05*


that this Application "shall be forwarded . . . to the Office of Patent Legal Administration for resolution of the ownership question" pursuant to Section 324 of the Manual of Patent Examining Procedure ("MPEP"). MPEP § 324.II, at 300-20 (8th ed. 2001). Although BioCell understands that the ownership question may be resolved by the Office of Patent Legal Administration, BioCell respectfully requests that the Office defer to the pending federal court litigation action before which the ownership question is already in the process of being resolved.

Pursuant to MPEP Section 2001.06(c), BioCell submits the attached Information Disclosure Statement to provide disclosure that the subject matter of this Application is involved in litigation. BioCell provides disclosure of the existence of the litigation and submits a number of selected papers from the litigation, including the pleadings in which the inventorship and ownership of this Application are raised as disputed issues in the litigation. (*See* IDS Cite Nos. 2-7.) BioCell also submits the removal proceedings papers in which the parties to the litigation dispute whether the federal court has subject matter jurisdiction to resolve the inventorship and ownership questions. (*See* IDS Cite Nos. 8-12.) Finally, BioCell submits a copy of its interrogatory responses in which it asserts its ownership interest in this Application. (*See* IDS Cite No. 13 (Response to Interrogatory No. 2).)

Respectfully submitted,

December 29, 2004

Date

  
\_\_\_\_\_  
Charles J. Rogers  
Reg. No. 38,286  
Winstead Sechrest & Minick P.C.  
910 Travis Street, Suite 2400  
Houston, Texas 77002-5895  
Tel: (713) 650-2716  
Fax: (713) 650-2400  
Attorney for BioCell, L.P.,  
Assignee of Omitted Inventor